

### **DETAILED ACTION**

Claims 1-2, 10-19 and 23-27 are currently pending. Claims 23-27 are currently under examination.

### **Withdrawn Rejections**

The prior rejection of claims 25-27 under 35 U.S.C. 103(a) as being unpatentable over US 2003/0149080 (previously applied) in view of US 6,416,789 is withdrawn in light of Applicant amendment to independent claims 25 and 27 to recite a specific ratio of 1:50 of the insecticidally active compound according to formula (I) to the at least one boron compound. The instant claims are now commensurate in scope with the unexpected results Applicant submitted 08/19/2010 regarding claims 25-27, thus the obviousness rejection is withdrawn.

### **Examiner's Note**

Unless otherwise indicated, previous objection/rejections that have been rendered moot in view of the amendment will not be reiterated. The arguments in the 11/17/2010 response will be addressed to the extent they apply to current rejection(s).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### **Modified Rejections:**

The following rejections are modified based on Applicant's claim amendments.

### ***Claim Rejections - 35 USC § 103***

**Claims 23-24 remain rejected under 35 U.S.C. 103(a) as being unpatentable over US 2003/0149080 in view of US 5,223,178.**

This rejection is maintained for reasons of record in the Office Action mailed 05/18/2011. The rejection has been reworded slightly based upon Applicant's amendments filed 08/17/2011. The teachings of the '080 publication in view of the '178 patent are discussed in the prior Office action and will not be iterated herein.

Regarding the newly added limitations of 'wherein there is a synergistic ratio of about 1 to 48 of insecticidally active compound according to formula (I) to the at least one quaternary ammonium compound', the '080 publication teaches the compound of formula (I) and a fungicidally active compound (abstract). The '080 publication does not *ipsis verbis* teach the compound of formula (I) to fungicidally active agent is about 1:48, however the '080 publication teaches a multitude of ratios of the compound of Formula (I) to a second active ingredient, such as 1:1 (0.0004:0.0004), 1:25 (0.004:0.1) and 1:125 (.0008:.1) (page 13, Table B). As MPEP 2144.05 recites "where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine optimization". The '080 publication teaches multiple ratios of the active agent of formula I to a second active agent wherein the range of ratios taught overlap with the instant claimed ratio of the compound of formula I to fungicidally active agent.

Response to Arguments:

Applicant argues the claims now recite the synergistic ratio employed and as such are not commensurate in scope with the arguments previously made over the cited art.

In response, the declaration submitted 08/19/2010 provides unexpected results for benzalkonium chloride and thiadoprid in the specific ratio of 1:48. The instant claims are directed to the specific ratio; however contain multiple quaternary ammonium compounds. The presented results are not commensurate in scope with the Markush group of quaternary compounds present in instant claim 23, nor is there anything of record to indicate the presented results would be representative of the claimed group of quaternary compounds.

New Rejections:

The following new rejections are based on Applicant's claim amendments.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 23- 27** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 23, 25 and 27 contain the newly added limitations of 'a synergistic ratio of about 1 to 48' or 'about 1 to 50' of the compound of formula (I) to the second compound. The response filed 08/17/2011 with the newly amended claims alleged no support for new limitations. Neither direct support

nor implicit support was located in the instant specification for the newly added claim limitation directed to specific ratios. Applicant's specification states the ranges of 0.001 to 1% by weight of the at least one insecticidially active compound and 0.05 to 25% by weight of fungicide (page 10, lines 5-16), and a specific ratio of 1:45 in Example 2 (page 11, lines 5-10), however this does not provide support for the specific ratios of 1:48 and 1:50 which are presently claimed.

If Applicant believes that support for claims 23, 25 and 27, containing the specific ratio of the compound of Formula (I) to the second compound, is present and clearly envisaged in the instant application or earlier filed priority documents, applicant must, in responding to this Office Action, point out with particularity, where such support may be found.

Applicant does not indicate where these limitations are supported by the original specification, or how, as is Applicant's burden. See MPEP §714.02, last sentence of the third paragraph from the end and MPEP §2163.06 (I) last sentence.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LYNDSEY BECKHARDT whose telephone number is (571)270-7676. The examiner can normally be reached on Monday thru Thursday 7:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Kwon can be reached on (571) 272-0581. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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